

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

WP(C).No. 8005 of 2005(C)

PETITIONER:

M.V.VIJAYAN, AGED 53 YEARS,
S/O.LAE VELU, OVERSEER, TRANSMISSION SUB
DIVISION, KERALA STATE ELECTRICITYBOARD,
H.M.T.COLONY, KALAMASSERY, ERNAKULAM DISTRICT.

BY ADV. SRI.K.S.BABU
SMT.N.SUDHA

RESPONDENTS:

1. THE KERALA STATE ELECTRICITYBOARD, REP.
BY ITS SECREFETARY, VYDYUTHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM.
2. THE ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL MAJOR SECTION, KERALA STATE ELECTRICITY
BOARD, IRINJALAKUDA, THRISSUR.
3. THE EXECUTIVE ENGINEER, ELECTRICAL
DIVISION, KERALA STATE ELECTRICITY BOARD,
IRINJALAKUDA, THRISSUR DISTRICT.
4. THE DEPUTY CHIEF ENGINEER,
ELECTRICAL CIRCLE, KERALA STATE ELECTRICITY BOARD,
IRNJALAKUDA, THRISSUR DISTRICT.
5. THE ASSISTANT EXECUTIVE ENGINEER,
KERALA STATE ELECTRICITY BOARD,
CHERPU, THRISSUR DISTRICT.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) NO: 8005/2005 C

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER DT. 30/08/97 B THE R3 TO THE PETITIONER.

EXT.P2. COPY OF THE ORDER DT. 29/12/98 BY THE R3 TO THE PETITIONER.

EXT.P3. COPY OF THE APPEAL SUBMITTED BY THE PETITIONER BEFORE THE R4.

EXT.P4. COPY OF THE ORDER DT. 4/10/99 BY THE R4.

EXT.P5. COPY OF THE JUDGMENT DT. 4/2/2004 IN OP NO. 34741/2000 OF THIS COURT.

EXT.P6. COPY OF THE ORDER DT. 29/4/2004 BY THE R4.

EXT.P7. COPY OF THE ENQUIRY REPORT ISSUED TO THE PETITIONER.

RESPONDENT'S EXHIBITS

EXT.R1A. COPY OF THE REPRESENTATION TO THE R2 BY THE PETITIONER.

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K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 8005 OF 2005-C

JUDGMENT

The petitioner is an Overseer of the Kerala State Electricity Board. This writ petition is filed by him, challenging the orders passed by the disciplinary authority in connection with an incident in 1997. At the relevant time the petitioner was the Lineman Grade I of Electrical Major Section, Irinjalakuda. He was in charge of the street lights along Korumbassery – Kattoor road. The street lights on the said road were found burning during the day time on 20.6.1997. The same continued for three days. He has been served a memo of charges dated 28.6.1997, concerning the above misconduct in not switching off the street lights in time. The petitioner submitted his reply on 1.8.1997, stating that he was forced to leave home urgently to attend his father and therefore, he could attend office on 20th, 21st and 22nd of June, 1997. There was no wilful negligence or laches from his part. Dissatisfied with the reply of the petitioner, the disciplinary authority appointed an enquiry officer to enquire into the charges, by Ext.P1 order dated 30.8.1997. The enquiry officer submitted his report on 20.10.1998, finding the petitioner guilty. Based on that report, a

punishment of barring one increment for six months without cumulative effect was imposed on him with effect from 1.1.1999, by Ext.P2 order dated 29.12.1998. The petitioner filed Ext.P3 appeal. In the said appeal he stated that he has not consciously failed to perform his duty or neglected his duties. The charges levelled against him were not proved. The enquiry report does not reveal his guilt. The punishment was awarded based on pre-conceived notions, bias and prejudice. So, the petitioner prayed for exonerating him from the charges. The said appeal was dismissed by Ext.P4 order. It is a bald and cryptic order. The petitioner challenged the orders against him by filing O.P.No.34741/2000. The said O.P was disposed of by Ext.P4 judgment, directing the appellate authority to hear and pass fresh orders on his appeal. The appeal was re-heard and Ext.P6 speaking order has been passed, upholding the punishment against the petitioner. So, this writ petition is filed, challenging Ext.P6.

2. The grounds taken in the writ petition are the following: Ext.P6 order is arbitrary and illegal. It violates his fundamental rights under Article 14 of the Constitution of India. The 4th respondent did not consider the defence set up by him properly. The attendance register of the office was not considered by the 4th respondent appellate authority. The petitioner was on leave from 20-6-1997 to 22.6.1997. So, he is not responsible for the

failure to switch off the street lights. The enquiry officer did not gather evidence from any independent witness. The 4th respondent ought to have found that the enquiry officer did not afford a reasonable opportunity to him to prove his innocence. Since no complaint was received from the local people regarding the burning of the street lights, the above allegations cannot be correct. On the above grounds reliefs are sought.

3. A counter affidavit has been filed on behalf of respondents 1 to 5. They support the impugned orders. The petitioner left station on 20.6.1997 and attended office only on 24.6.1997. 19.6.1997 was a compulsory off day for the petitioner. So, he should have reported for duty on the morning of 20.6.1997 and should have switched off the street lights. They have also produced Ext.R1(a) reply filed by the petitioner to the charge memo, in which he has admitted his guilt. The petitioner has filed a reply affidavit, in which the execution of Ext.R1(a) is denied.

4. Heard the learned counsel on both sides. The petitioner has not produced the charge memo or the reply to the charge memo. Going by the appeal filed by him, it is seen that none of the grounds taken in this writ petition has been taken before the appellate authority. In the appeal he simply denies the findings entered against him by the enquiry authority. The finding that the petitioner was absent without intimation on 20.6.1997

and therefore, he did not switch off the street lights is a finding of fact, which cannot be disturbed in these proceedings under Article 226 of the Constitution of India. Further, I find no reason to disbelieve the genuineness of Ext.R1(a) produced by the respondents along with their counter affidavit. The petitioner simply stated that he is denying the execution of that document. Then he has got a duty to produce the correct reply filed by him to the memo of charges. I find no reason for the K.S.E.B to falsely create a document to implicate the petitioner. In view of Ext.R1 (a), the punishment is fully justified. I find no ground has been made out, warranting interference with the impugned orders. Accordingly, the writ petition fails and it is dismissed.

26th October, 2007.

K.BALAKRISHNAN NAIR, JUDGE.

Nm/